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SHORTHAND REPORTING

*Sharon K. Tammaglio*

**FILED**

*March 18, 2010*

STATE OF NEW JERSEY  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS  
STATE BOARD OF COURT REPORTING

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IN THE MATTER OF :

**DIANE HOLMES, C.C.R.** :

Certificate No: 30XI00166000 :

TO PRACTICE COURT REPORTING :  
IN THE STATE OF NEW JERSEY :

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Administrative Action

FINAL ORDER  
OF DISCIPLINE

This matter was opened to the New Jersey State Board of Court Reporting (hereinafter the "Board") upon its review of information that the respondent Diane Holmes, C.C.R., had failed to complete a minimum of fifteen (15) credits of continuing court reporting education courses during the period of July 1, 2006 to June 30, 2008 required for biennial license renewal pursuant to N.J.S.A. 45:15B-3.1 and N.J.A.C. 13:43-7.1 and 7.2. The Board has reviewed relevant documents on which the following findings of fact and conclusions of law are made:

### FINDINGS OF FACT

1. Respondent is a certified court reporter in the State of New Jersey and has been a certificate holder at all times relevant hereto.

2. N.J.S.A. 45:15B-3.1 and N.J.A.C. 13:43-7.1(a) require that certificate holders complete fifteen (15) continuing education credits for biennial certification renewal. N.J.A.C. 13:43-7.1(a) specifically requires that the certificate holder complete the required credits during the preceding biennial period. Therefore, for the biennial renewal period of 2008-2010, certificate holders were required to complete fifteen (15) continuing education credits during the period of July 1, 2006 to June 30, 2008.

3. In or about January 2009, the Board initiated a random audit of renewal applications for the 2008-2010 period, asking those randomly selected certificate holders to submit proof with regard to the satisfaction of continuing education requirements for the biennial renewal period, i.e., fifteen (15) credits of continuing education.

4. Respondent submitted information which indicated that she had completed a total of eleven (11), of the required fifteen (15), continuing education credits during the allotted time period of July 1, 2006 to June 30, 2008.

5. The Board, at its January 2009, granted the respondent a six (6) month extension to fulfill the requirement of the completion of fifteen (15) continuing education credits. He/She has now submitted documentation that demonstrates that he/she has satisfied the requirement but not within the time period required by law.

#### CONCLUSIONS OF LAW

1. Respondent failed to satisfy the requirements of N.J.S.A. 45:15B-3.1 and N.J.A.C. 13:43-7.1(a) with regard to the timely completion of the required number of continuing education credits for the 2008-2010 renewal period and is therefore subject to sanctions pursuant to N.J.S.A. 45:1-21(h), namely, the failure to comply with the provisions of an act or regulation administered by the Board. The Board finds that this conduct constitutes grounds for sanction pursuant to N.J.S.A. 45:1-25.

2. Respondent is subject to sanctions pursuant to N.J.S.A. 45:1-21(h), failure to comply with the provisions of an act or regulation administered by the Board, which constitutes grounds for sanction pursuant to N.J.S.A. 45:1-25.

#### DISCUSSION ON FINALIZATION

Based on the foregoing findings and conclusions, a Provisional Order of Discipline, which provisionally imposed a formal reprimand and a civil penalty totaling \$400.00, was

entered on July 20, 2009, and a copy was served on the respondent. The Provisional Order was subject to finalization by the Board at 5:00 p.m. on the 30th business day following entry unless respondent requested a modification or dismissal of the stated Findings of Fact or Conclusions of Law by submitting a written request for modification or dismissal setting forth in writing any and all reasons why said findings and conclusions should be modified or dismissed and submitting any and all documents or other written evidence supporting respondent's request for consideration and reasons therefor.

In response to the Provisional Order, the respondent requested a modification or dismissal of said findings and conclusions, and alternatively requested elimination or reduction of the \$400.00 civil penalty in a letter dated August 3, 2009. In support of her request, Ms. Holmes advised that she was unaware of the requirements of N.J.A.C. 13:43-7.4 which details credit allocation for Internet courses. Hence, she erroneously believed that she had satisfied the education requirements. Additionally, the respondent argued that the proposed civil penalty should be rescinded because she had ultimately satisfied the continuing education requirements during the extension period granted to her by the Board and because its imposition would constitute a financial hardship for her family.

The Board reviewed the respondent's submission at its September 21, 2009 meeting. Following its review of this matter, the Board determined that further proceedings were not necessary and that no material discrepancies had been raised. While the Board acknowledged the current economic circumstances, it noted that credits for continuing education must be obtained biennially by each holder of an active certificate during the period preceding the established certificate renewal date as required by N.J.S.A. 45:15B-3.1 and 3.2. Thus, the respondent was required to complete her fifteen (15) credits by June 30, 2008. The Board determined that Ms. Holmes failed to submit proof of the completion of the required credits on a timely basis as the proofs presented indicated that respondent did not satisfy the total amount of the continuing education credits within the preceding certificate renewal period.

Moreover, the Board determined that its granting of an extension of time within which to complete the continuing education was a courtesy granted by the Board to allow the respondent to comply with the applicable statutes and regulations. It did not alter the fact that Ms. Holmes had failed to comply timely with the continuing education requirements which subjected her to disciplinary action.

However, the Board concluded that there were sufficient mitigating circumstances to permit Ms. Holmes to remit payment of the civil penalty by installments over eight (8) months in the amount of fifty (\$50.00) dollars per month. Thereafter, the Board voted to finalize the Provisional Order without any modifications but authorized the option of installment payments of the imposed civil penalty should the respondent so elect.

ACCORDINGLY, IT IS on this 15<sup>th</sup> day of March

MARCH 2010 ORDERED that:

1. Respondent Diane Holmes, C.C.R., is hereby formally reprimanded for failing to timely complete the required number of continuing education credits, in violation of N.J.S.A. 45:1-21(h), N.J.S.A. 45:15B-3.1 and N.J.A.C. 13:43-7.1(a).

2. Ms. Holmes is hereby assessed a civil penalty in the amount of **\$400.00** for failing to complete the required number of continuing education credits during the preceding biennial period, in violation of N.J.S.A. 45:1-21(h), N.J.S.A. 45:15B-3.1 and N.J.A.C. 13:43-7.1.

In the alternative, Ms. Holmes may notify the Board office, prior to the entry of this Order, that she will pay the civil penalty, totaling **\$400.00** in equal monthly installments payments of **\$50.00** for a total of eight (8) months. The first payment shall be paid simultaneously with the submission of this

Order with subsequent payments due on the fifteenth of each month thereafter until the total amount is paid in full.

Any failure to make any installment payment within ten (10) days of the due date shall cause the entire remaining balance to become immediately due and payable without further notice. Further, failure to pay the penalty within the time period allotted above will result in the filing of a Certificate of Debt, including the applicable interest permitted by the New Jersey Court Rules, and may result in subsequent disciplinary proceedings before the Board for failure to comply with an Order of the Board.

NEW JERSEY STATE BOARD  
OF COURT REPORTING

By: 

MARIANNE CAMMAROTA, C.C.R.  
President